Supreme Court, U.S.
FILED

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No. 02-1584 APR 25 2003

OFFICE OF THE CLERK

# In the Supreme Court of the United States

**CARROLL COUNTY, SHERIFF OF CARROLL COUNTY ROD A. HERRICK (SUCCEEDED BY JEFFREY DORAN), MACON COUNTY, SHERIFF OF MACON COUNTY ROGER WALKER, EFFINGHAM COUNTY, SHERIFF OF EFFINGHAM COUNTY RONALD J. MEEK (SUCCEEDED BY JOHN MONNET), JASPER COUNTY, SHERIFF OF JASPER COUNTY ED FRANCIS, JEFFERSON COUNTY, SHERIFF OF JEFFERSON COUNTY ROY DEAN BRADFORD (SUCCEEDED BY ROGER MULCH), KANKAKEE COUNTY, SHERIFF OF KANKAKEE COUNTY TIMOTHY BUKOWSKI, McLEAN COUNTY, SHERIFF OF McLEAN COUNTY DAVID OWENS, TAZEWELL COUNTY, SHERIFF OF TAZEWELL COUNTY ROBERT M. HUSTON,** and **UNKNOWN DEPUTY SHERIFFS,**

*Petitioners,*

vs.

**DELVIN C. PAYTON, EVAN WALLACE, LARRELL CANNON, REGINALD CLAY, AARON S. CORSON,** and **PHILLIP O. CARSON,** on behalf of themselves and as representatives of the class herein defined,

*Respondents.*

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

I. Whether this Court's decision in *Ortiz* requires Rule 23 class certification issues to be addressed before a plaintiff's individual Article III standing, when the standing issue is dispositive of the claims against particular defendants?

II. In a putative class action where the named plaintiffs have no Article III standing with respect to certain defendants, can the "juridical link" theory substitute for Article III standing?

## RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, petitioners state that they have no parent companies or non-wholly owned subsidiaries.

## PARTIES TO THE PROCEEDING

**Plaintiffs**

Delvin C. Payton
Evan Wallace
Larrell Cannon
Reginald Clay
Aaron S. Corson
Phillip O. Carson

**Defendants**

Kane County, Sheriff of Kane County Kenneth R. Ramsey, Kane County Deputy Sheriff, Star #480, Kane County Deputy Sheriff, Star #658, and unknown deputy sheriffs

DuPage County, Sheriff of DuPage County John E. Zaruba, DuPage County Deputy Sheriff Derrickson, DuPage County Deputy Sheriff Rowell, and unknown deputy sheriffs

Carroll County, Sheriff of Carroll County Rod A. Herrick (succeeded by Jeffrey Doran), and unknown deputy sheriffs

Champaign County, Sheriff of Champaign County David J. Madigan (succeeded by Dan Walsh), and unknown deputy sheriffs

Coles County, Sheriff of Coles County James A. Kimball (succeeded by Ron Scott), and unknown deputy sheriffs

DeKalb County, Sheriff of DeKalb County Roger Scott and unknown deputy sheriffs

DeWitt County, Sheriff of DeWitt County Roger W. Massey, and unknown deputy sheriffs

Effingham County, Sheriff of Effingham County Ronald J. Meek (succeeded by John Monnet), and unknown deputy sheriffs

Fayette County, Sheriff of Fayette County Harold C. Johnson, and unknown deputy sheriffs

Iroquois County, Iroquois County Sheriff Joseph V. Mathy (succeeded by Eldon Sprau), and unknown deputy sheriffs

Jasper County, Sheriff of Jasper County Ed Francis, and unknown deputy sheriffs

Jefferson County, Sheriff of Jefferson County Roy Dean Bradford (succeeded by Roger Mulch), and unknown deputy sheriffs

Kankakee County, Sheriff of Kankakee County Timothy Bukowski, and unknown Kankakee deputy sheriffs

Knox County, Sheriff of Knox County James Thompson, and unknown deputy sheriffs

Macon County, Sheriff of Macon County Roger Walker, and unknown deputy sheriffs

McLean County, Sheriff of McLean County David Owens, and unknown deputy sheriffs

Piatt County, Sheriff of Piatt County Forrest Sawlaw (succeeded by Robert Manint), and unknown deputy sheriffs

St. Clair County, Sheriff of St. Clair County Mearl J. Justus, and unknown deputy sheriffs

Tazewell County, Sheriff of Tazewell County Robert M. Huston, and unknown deputy sheriffs

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## PETITION FOR A WRIT OF CERTIORARI

## OPINIONS BELOW

The opinion of the United States Court of Appeals (App. 1-16a) is reported at 308 F.3d 672. Its denial of the petition for rehearing is reproduced in the appendix (App. 17a). The decision and judgment of the district court are unreported and reproduced in the appendix (App. 18a).

## JURISDICTION

The court of appeals entered its judgment on September 3, 2002 (App. 1a). The timely-filed petition for rehearing with suggestions for rehearing en banc was denied on January 27, 2003 (App. 17a). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## STATUTES AND CONSTITUTIONAL PROVISION INVOLVED

Article III, section 2 of the United States Constitution is reproduced at 24a. Illinois Public Act 91-0094 is reproduced in the appendix at 25a.

## STATEMENT OF THE CASE

Illinois Public Act 91-0094 amended Illinois' Counties Code (55 ILCS 5/4-5001) and Code of Criminal Procedure (725 ILCS 5/110-7) (App. 25a). It authorized sheriffs to collect fees for services they provide involving bonds. After bail is set, sheriffs are statutorily mandated to collect the bail, issue a receipt, release the arrestee, and deposit that bail with the court clerk. 725 ILCS 5/110-9. Counties may assess a fee of $1.00 for these services, but can increase it

if "justified by an acceptable cost study" showing that $1.00 is insufficient to cover costs. 55 ILCS 5/4-5001. The fees vary from $1.00 to $45.00 (D10 pp. 7, 11, 16-17, 20-26-29, 31, 34-37).[1]

The complaint alleged that plaintiffs Payton, Wallace, Cannon and Clay were confined to the Kane County Jail, granted bail and required to pay $11 in addition to the amount set for bail (D10 pp. 7, 15). Payton was detained an additional two hours until the additional $33.00 (in addition to the $5,300 set for three bails) was paid (D10 pp. 13-14). Plaintiffs Corson and Carson were incarcerated in DuPage County and paid a $15.00 fee (D10 pp. 7, 17-19). Carson was arrested three times, but only paid the fee twice; the third time he was released on a personal recognizance bond, and not required to pay the fee (D10 p.18).

None of the named plaintiffs were arrested in the other 17 defendant counties, and none paid any fee in those 17 counties.

The complaint, as amended, was brought under 42 U.S.C. §1983 for violations of the Eighth and Fourteenth Amendments, and under various state law theories. Jurisdiction was invoked under 28 U.S.C. §§1331, 1367. Plaintiffs sought both damages and injunctive relief (D10 pp. 40-48, 57-58, 64-69).

All defendants moved to dismiss on various grounds. The district court dismissed the action for lack of standing and entered judgment in favor of defendants (App. 18-21a). It held the class certification motion was moot (App. 21a).

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[1] "D" refers to the civil docket number. "D10" is the second amended complaint.

Plaintiffs appealed (D129). On appeal, the two counties in which the named plaintiffs were arrested conceded error by the district court on the standing issue. All defendants raised alternative grounds for affirmance, which the Seventh Circuit did not reach.

The Seventh Circuit also reversed as to the other 17 counties (App. 7-15a). It held that this Court's decision in *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999) was a "directive to consider issues of class certification prior to issues of standing" (App. 11a). The Seventh Circuit stated it was clear that the 17 counties imposed no injury on these named plaintiffs (App. 8a).

The Seventh Circuit first stated that the issue of a defendant class was not before it (App. 7-8a). The question it then addressed was how the counties, if "not linked as a class," could "all be sued by a class represented by six named plaintiffs who have direct claims against only two" counties (App. 8a). It held that a plaintiff class may be certified under Rule 23 and, once certified, "statutory and Article III standing requirements must be assessed with reference to the class as a whole, not simply with reference to the individual named plaintiffs" (App. 12-13a).

The Seventh Circuit provided several rationales for its decision. It held that it was "reasonable for the putative plaintiff class to try to hold all counties accountable within one suit" (App. 11a). It found "no reason to truncate potentially efficient uses of the class action decision" which "may be superior" to multiple actions "challenging the effects of the same statute" (App. 14a). "Most importantly," it stated, a plaintiff may sue a defendant which imposed no injury because "relief may only be obtained through one broad suit, and it will be impossible to find a named plaintiff to match each defendant" (App. 14a). Because

these plaintiffs "were personally injured by the operation of the very same [state] statute," the Seventh Circuit concluded that these plaintiffs could sue the 17 counties who imposed no fee or other injury on the named plaintiffs seeking to represent a class (App. 8a, 15a).

## REASONS FOR GRANTING THE PETITION

This case involves two important issues. The first is whether lower courts are properly construing this Court's decision in *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999) to mandate consideration of class certification issues before Article III standing. The second is whether plaintiffs have standing to sue defendants, who have imposed no injury on them, merely because there are common issues of liability. This is the so-called "juridical link" theory.

Only this Court can instruct the lower courts on whether *Ortiz* is a "limited exception," as some courts hold, or a "directive," as the Seventh Circuit held here, to consider class certification before Article III standing. Only this Court can resolve whether the judicially-created "juridical link" doctrine exists and can be applied constitutionally in a class action to permit plaintiffs to sue a group of defendants who have imposed no injury on plaintiffs, but acted similarly under the same state statute in collecting a bond fee.

### I. THE DECISION THAT RULE 23 CLASS CERTIFICATION MUST BE DECIDED BEFORE ARTICLE III STANDING CONFLICTS WITH PRECEDENT OF THIS COURT AND THE CIRCUIT AND DISTRICT COURTS.

Instead of considering the threshold issue of Article III standing, the Seventh Circuit reversed, holding that this

Court had issued a "directive" to consider issues of class certification first in *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999). In so holding, the Seventh Circuit misconstrued *Ortiz,* created an inter-circuit and intra-circuit conflict, and violated Fed.R.Civ.P. 82 and the Rules Enabling Act, 28 U.S.C. §2072(b).

### A. THE SEVENTH CIRCUIT MISCONSTRUED *ORTIZ*.

Three cases by this Court led to *Ortiz's* statement that class certification may be considered before Article III standing. The first was *Arizonans for Official English v. Arizona,* 520 U.S. 43 (1997), in which the Court held that because both mootness and standing were requirements of Article III, it was appropriate to consider mootness first as a "logical antecedent." This holding was then cited by the Court in *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 613 (1997), for the proposition that it was appropriate to consider the class certification issues because they were dispositive and "logically antecedent to the existence of any Article III issues." *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999), in turn cited *Amchem Prod.* for the proposition that although class certification should be "treated first," the certification requirements "must be interpreted in keeping with Article III constraints."

The plaintiffs in both *Ortiz* and *Amchem Prod.* filed suit to obtain judicial imprimatur of a settlement of current and future asbestos claims. *Amchem,* 521 U.S. at 597, 601-02; *Ortiz*, 527 U.S. at 825-26. This Court held that the class certification issue "here is logically antecedent to the existence of any Article III issues, [and] it is appropriate to reach [it] first." *Amchem,* 521 U.S. at 612-13; *Ortiz*, 527 U.S. at 831. This Court reaffirmed in both cases that the

class issue "must be interpreted in keeping with Article III constraints." *Id.*, citing *Amchem*, 521 U.S. at 612-13.

The Seventh Circuit looked only to *Ortiz* in holding that this Court's "directive" is that courts must consider Rule 23 before Article III standing (App. 11a). Nothing in *Amchem* or *Ortiz* suggests a "directive" that Rule 23 concerns must always be addressed first, as the Seventh Circuit held, or that the failure to do so mandates reversal, as it concluded (App. 11-12a).

### B. THE CIRCUIT AND DISTRICT COURTS CONFLICT ON *ORTIZ*.

The circuit and district courts are divided on the issue of whether class certification or Article III standing must be resolved first, and whether *Ortiz* is a limited exception to the general rule that constitutional standing must first be resolved. The Fifth Circuit has not understood *Ortiz* as a "directive" to consider class certification issues first. *Ford v. NYL Care Health Plans of Gulf Coast, Inc.*, 301 F.3d 329, 333 n.2 (5th Cir. 2002) (holding *Ortiz* articulates a "limited exception" and considers Article III standing first "because it determines the court's fundamental power even to hear the suit"), *cert. denied*, ___ U.S. ___, 71 U.S.L.W. 2489 (March 24, 2003); *Pederson v. Louisiana State Univ.*, 213 F.3d 858, 866 n.5 (5th Cir. 2000) (because the certification issue was not outcome determinative, as in *Ortiz* and *Amchem*, "it need not, in our minds, be treated first"). In *Rivera v. Wyeth-Ayerst Labs.*, 283 F.3d 315 (5th Cir. 2002), plaintiff sought to represent a class of persons who were never injured physically or emotionally by the challenged drug. The Fifth Circuit held that "standing is an inherent prerequisite to the class certification inquiry." *Rivera*, 283

F.3d at 319. It first ruled on the jurisdictional issue of standing, even though the lower court did not discuss it, "because it determines the court's fundamental power even to hear the suit." *Rivera,* 283 F.3d at 319 n.6.

The Seventh Circuit's decision here also conflicts with the Sixth, Ninth, and Eleventh Circuits, which have held Article III standing must be decided before Rule 23 certification issues. *Prado-Steiman v. Bush*, 221 F.3d 1266, 1280 (11th Cir. 2000); *Fallick v. Nationwide Mut. Ins. Co.*, 162 F.3d 410, 423 (6th Cir. 1998); *Lee v. State of Oregon*, 107 F.3d 1382, 1390 (9th Cir. 1997), *cert. denied sub nom. Lee v. Harcleroad,* 522 U.S. 927 (1997), citing *O'Shea v. Littleton,* 414 U.S. 488, 494 (1974) ("If the litigant fails to establish standing, he may not 'seek relief on behalf of himself or any other member of the class' ").

This decision also creates an intra-circuit conflict in the Seventh Circuit, which now has three positions on whether constitutional standing or class certification must first be considered. First, in this case, it held that this Court's "directive" in *Ortiz* is that Rule 23 standing must be considered first (App. 12a). Second, it has held that a court has the discretion whether to address Article III or Rule 23 standing first. *Norfolk Southern Ry. Co. v. Guthrie*, 233 F.3d 532, 534 (7th Cir. 2000). The third position is that Article III standing should receive "priority consideration" in a class action and where there is no case or controversy between the named plaintiffs and defendant, that defendant "must be dismissed as a party." *Jackson v. Resolution GGF OY*, 136 F.3d 1130, 1132 (7th Cir. 1998).

The district courts are also divided on the question of whether *Ortiz* mandates resolution of the class certification issue before Article III standing. *Compare Dajour B. ex rel.*

*L.S. v. City of New York*, 2001 WL 1173504 *7 n.9 (S.D.N.Y. 2001) with *Dunden v. FirstPlus Bank*, 2002 WL 1155325 (S.D.Ill. 2002). *See also In re Buspirone Patent Litigation*, 185 F.Supp.2d 363, 377 (S.D.N.Y. 2002); *Williams v. FirstPlus Home Loan Trust 1996-2,* 209 F.R.D. 404, n. 10 (W.D.Tenn. 2002) (holding "[l]ike any other jurisdictional issue," standing "should have received priority consideration"). One district court, relying on the Seventh Circuit decision here, held: "The *Ortiz* exception appears 'to rest on the long-standing rule that, once a class is properly certified, statutory and Article III standing requirements must be assessed with reference to the class as a whole, not simply with reference to the individual named plaintiffs.'" *Clark v. McDonald's Corp.*, 213 F.R.D. 198, 204 (D.N.J. 2003), quoting *Payton v. County of Kane,* 308 F.3d 673, 680 (7th Cir. 2002).

### C. PLAINTIFFS DO NOT OBTAIN STANDING BY FILING A CLASS ACTION.

Effectively, the lower court's decision permits a court which does not have a case or controversy before it to enter an order certifying a class, thereby giving itself jurisdiction. This result cannot be justified with this Court's established precedent that a class action "adds nothing to the question of standing." *Lewis v. Casey*, 518 U.S. 343, 357 (1996) (citation omitted).

> [A] named plaintiff cannot acquire standing to sue by bringing his action on behalf of others who suffered an injury which would have afforded them standing had they been named plaintiffs; it bears repeating that a person cannot predicate standing on injury which he does not share. Standing cannot be acquired through the back door of a class action.

*Allee v. Medrano*, 416 U.S. 802, 828-29 (1974), citing *O'Shea v. Littleton*, 414 U.S. 488, 492-95 (1974). *See also Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 216 (1974).

This Court has clearly mandated that "[t]he requirement that jurisdiction be established as a threshold matter 'springs[s] from the nature and limits of the judicial power of the United States' and is 'inflexible and without exception.'" *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998). (citation omitted, original brackets). "Without jurisdiction the court cannot proceed at all in any cause." *Id.* at 94. In *Steel Company*, the Court held that constitutional standing had to be resolved and "jurisdiction is always an antecedent question." *Id.* at 101. However, it recognized that statutory standing may be considered before Article III standing. *Id.* at 92, 101. It does not hold that statutory standing *must* be considered first.

After reversing for failing to consider class certification first, the Seventh Circuit instructed that if the class is certified on remand, "Article III standing requirements are assessed with reference to the class as a whole, not simply with reference to the individual named plaintiffs" (App. 12-13a). The lower court's decision enables a court to create Article III jurisdiction by its own order. It allows a court, which lacks the judicial power to adjudicate claims under Article III for lack of standing, to order a class to be certified. Once the class is certified, standing is to be determined as to the class as a whole, notwithstanding the fact that the named plaintiffs sustained no injury caused by all named defendants. Under this decision, Article III standing requirements may be avoided through the class action vehicle, contrary to this Court's precedent. *Lewis*, 518 U.S. at 357; *Allee*, 416 U.S. at 828-29; *O'Shea*, 414 U.S. at 494.

Certifying the class under Rule 23 before considering Article III standing also violates the Rules Enabling Act, under which federal procedural rules "shall not abridge, enlarge or modify any substantive right." 28 U.S.C. §2072(b). It conflicts with Fed.R.Civ.P. 82, which precludes construction of the rules "to extend or limit the jurisdiction of the United States district courts." *See Owen Equipment & Erection Co. v. Kroger,* 437 U.S. 365 (1978) (it is "axiomatic" that the rules do not create jurisdiction). Thus, Rule 23 cannot be interpreted to expand a federal court's jurisdiction under the vehicle of a class action where Article III jurisdiction otherwise does not exist—even if a court views this to be a "superior" use of the class action vehicle, as the Seventh Circuit stated (App. 14a).

This Court should accept this case for review and resolve these important issues of the scope of *Ortiz,* and whether Rule 23 or Article III standing is the threshold inquiry.

## II. THE ADOPTION OF THE "JURIDICAL LINK" DOCTRINE EVADES ARTICLE III STANDING REQUIREMENTS AND CREATES CONFLICTS AND CONFUSION IN THE LOWER COURTS.

The Seventh Circuit acknowledged that no defendant class was sought, but adopted the so-called "juridical link" theory to permit a suit against defendants, who are not linked as a class, "by a class represented by six named plaintiffs who have direct claims against only two of them" (App. 8a). As shown below, the adoption of the "juridical link" theory based on *dicta* in *LaMar v. H&B Novelty & Loan Co.*, 489 F.2d 461 (9th Cir. 1973), conflicts with the precedent of this Court on Article III and of lower courts. This Court should exercise its supervisory authority to provide guidance and resolve the important questions

presented here, including when, if ever, may a plaintiff sue unrelated defendants (who have imposed no injury on that plaintiff) where there are common issues of liability, and whether the "juridical link" doctrine exists and can be applied to evade Article III standing.

### A. The Lower Court's Decision Cannot Be Reconciled with this Court's Precedent.

The Seventh Circuit adopted the "juridical link" doctrine, concluding plaintiffs can sue anyone who is "following a common statute," although admittedly the 17 counties had no interaction with nor imposed an injury on any named plaintiff. This conclusion cannot be reconciled with Article III or this Court's precedent that the "triad of injury-in-fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 103-04 (1998); *Utah v. Evans*, 536 U.S. 452, 122 S.Ct. 2191, 2197 (2002) ("A lawsuit does not fall within this grant of judicial authority unless, among other things, courts have the power to 'redress' the 'injury' that the defendant allegedly 'caused' the plaintiff"). These factors are an " 'essential and unchanging part' of Article III's case-or-controversy requirement and a key factor in dividing the power of government between the courts and the two political branches." *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000) (citations omitted).

This Court has held that even though a class representative may have standing to challenge one type of conduct, this does not automatically give that plaintiff standing to sue a defendant for conduct which has not imposed an injury on that plaintiff. *Blum v. Yaretsky*, 457 U.S. 991, 999

(1982) (holding plaintiffs only had standing to sue for transfers to lower (not higher) care facilities). "It is not enough that the conduct of which plaintiff complains will injure *someone*." *Id.* (original italics). "A plaintiff must show he is a member of the class and will be concretely affected." *Id.*

The judicially-created "juridical link" exception must give way to Article III. To hold otherwise conflicts with this Court's express holding that "if none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class." *O'Shea*, 414 U.S. at 494; *United States v. Hayes*, 515 U.S. 737, 745 (1995) (because the class representatives did not live in that voting district, they had not sustained any harm and lacked standing).

### B. Whether the "Juridical Link Doctrine" Exists Is An Important Question on Which Lower Courts Conflict.

*LaMar v. H&B Novelty & Loan Co.*, 489 F.2d 461 (9th Cir. 1973), is the genesis of the "juridical link" theory. The Seventh Circuit relied on *LaMar* and stated it "held that if the plaintiffs as a group—named and unnamed—have ties related by way of a conspiracy or concerted scheme or otherwise 'juridically related in a manner that suggests a single resolution of the dispute would be expeditious,' the claim could go forward" (App 9a). 489 F.2d at 466.

It is *LaMar's* reference to "juridically related" that courts expanded into a "juridical link" exception to Article III standing. Yet, *LaMar's* statement was *dicta*, and the Ninth Circuit expressly stated it was not deciding the case based

on Article III standing. Rather, it "assume[d] the presence of standing," analyzed the case under Rule 23, found that the class representative's claim was not "typical," and held plaintiff could not "fairly and adequately" protect the class if he did not have a claim against that defendant. *LaMar*, 489 F.2d at 464-65. It rejected that the plaintiff can represent the interests of the class "even though the plaintiff may have suffered an identical injury at the hands of a party other than the defendant." *Id.* at 466. It is in the context of discussing Rule 23 that *LaMar* commented that these requirements did not "apply in instances in which all defendants are juridically related in a manner that suggests a single resolution of the dispute would be expeditious."

Various circuits have acknowledged the existence of this doctrine. *See, e.g., Haas v. Pittsburgh Nat'l Bank*, 526 F.2d 1083, 1088 n.3 (3d Cir. 1975) (quoting *LaMar's* "juridically related" reference, but holding the named plaintiff lacked standing to represent a class where she had not engaged in a commercial transaction); *Thompson v. Board of Educ.*, 709 F.2d 1200 (6th Cir. 1983) (reversing the bilateral class certifications, holding that "[s]tanding is a prerequisite to bringing suit and nothing in Fed.R.Civ.P.23 alters this requirement" and distinguishing *LaMar* because it did not involve enforcement of a statute).

Contrary to the Seventh Circuit's statement it had "never addressed the juridical link doctrine squarely" (App. 9a), this very issue was presented—and rejected—in *Jackson v. Resolution GGF OY*, 136 F.3d 1130 (7th Cir. 1998). In *Jackson*, plaintiffs/borrowers sought to recover statutory penalties as a result of notes they signed naming assignees and purchasers as defendants. The Seventh Circuit held that plaintiff lacked standing to sue a defendant who

purchased paper from a defendant bank, but did not hold any of plaintiffs' notes. Although the phrase "juridical link" was not used in the *Jackson* decision, the parties fully briefed this theory. *Dunden v. FirstPlus Bank*, 2002 WL 1155325, at *3 (S.D. Ill. April 29, 2002).

Courts have approached the question of how to hold a group of unrelated defendants in different ways, while accepting the "juridical link" doctrine's existence. The Eleventh Circuit has acknowledged the "juridical link" theory, but held that unrelated defendants may be permissively joined under Rule 20. *Moore v. Comfed Sav. Bank*, 908 F.2d 834, 838 (11th Cir.), *reh'g denied en banc*, 917 F.2d 570 (1990). The Second Circuit discussed this doctrine in the context of Rule 23 and a defendant class. *Marcera v. Chinlund*, 595 F.2d 1231, 1237-38 (2d Cir.), *vacated on other grounds sub nom. Lombard v. Marcera*, 442 U.S. 915 (1979).

The Sixth Circuit has held that a plaintiff can acquire standing by bringing a class action. As long as the plaintiff has standing to sue one named defendant, the Sixth Circuit held, then the analysis reverts to Rule 23's requirements as to the remaining defendants, and whether that plaintiff can adequately represent the class's interests. *Fallick v. Nationwide Mut. Ins. Co.*, 162 F.3d 410, 422-23 (6th Cir. 1998). The Sixth Circuit has also held, as well as the Third Circuit, that unless the plaintiff has Article III standing as to that named defendant, no suit may be maintained. *Thompson v. Board of Educ.*, 709 F.2d 1200 (6th Cir. 1983); *Kauffman v. Dreyfus Fund, Inc.*, 434 F.2d 727 (3d Cir. 1970), *cert. denied*, 401 U.S. 974 (1971) (refusing to let a plaintiff, who owned shares in only four of 61 mutual funds, maintain a class action against funds which he did not own).

The district courts apply the "juridical link" doctrine in a number of different contexts with varying results. Some have held, like the Seventh Circuit held here, that plaintiff had standing to sue because the defendants were "juridically related." *See, e.g., Alves v. Harvard Pilgrim Health Care, Inc.*, 204 F.Supp.2d 198, 205 (D. Mass. 2002) (defendants were wholly owned affiliates of the same company and plaintiffs had standing to challenge the same provisions of the ERISA plans), *aff'd on other grounds*, 316 F.3d 290 (1st Cir. 2003); *Bromley v. Michigan Educ. Ass'n-NEA*, 178 F.R.D. 148, 163 (E.D. Mich. 1998) (holding the "juridical link" doctrine was an exception to the standing requirement and plaintiffs could sue unions which had not injured them because they all charged the same service fee and because the "union affiliation presents an organizational structure which suggests the expediency of proceeding against, and resolving the issues as they relate identically to, all named defendants"); *Weiss v. Winner's Circuit of Chicago,* 1995 WL 755328, at *1-2 (N.D.Ill. 1995).

Others courts have come to the opposite result, holding that a plaintiff's individual standing is a threshold issue, and the juridical link doctrine is no exception to Article III standing. *Angel Music, Inc. v. ABC Sports, Inc.*, 112 F.R.D. 70, 73-75 (S.D.N.Y. 1986) (holding a "plaintiff must establish his personal standing to sue each defendant before attempting to satisfy the requirements of class certification set out by Rule 23, and considering *La Mar* only as to Rule 23's "typicality" requirement); *Hardin v. Harshbarger,* 814 F.Supp. 703, 707 (N.D.Ill. 1993) (holding plaintiff had to show Article III standing in a class action challenging a fee assessed by a county, and since plaintiffs had not paid that fee in two of the named counties, they were dismissed).

One district court has stated the requirement that a plaintiff have a claim against each defendant is not a constitutional requirement or a Rule 23 requirement. Rather, it described this as a "judicially-imposed condition, which need not be satisfied" where the defendants were "related by a conspiracy or juridical link." *Follette v. Vitanza,* 658 F.Supp. 492, 507, *modified on other grounds,* 658 F.Supp. 514, *vacated in part on other grounds,* 671 F.Supp. 362 (N.D.N.Y. 1987).

Other courts recognize the existence of the "juridical link" doctrine, but decline to apply it based on the facts before them. *Berry v. GMAC-Residential Funding Corp.,* No. 01-2713, 2002 WL 1797779 at *9 (W.D. Tenn. 2002) (recognizing the "juridical link" doctrine, but declining to apply it in class action brought against current holders or assignees of second mortgage notes and holding this doctrine applies only where defendants have a contractual obligation or a local statute requires common action by defendants); *Dash v. FirstPlus Home Loan Trust 1996-2,* No. 1:01CV 00923 (M.D.N.C. March 6, 2003) (holding plaintiffs lacked standing because the defendants were assignees only of their loans, recognizing the "juridical link" doctrine, but limiting it to contract obligation or statute which requires common action, citing *Payton v. County of Kane,* 308 F.3d 673, 679 (7th Cir. 2002)).

Another way courts have approached this issue is by giving effect to Fed.R.Civ.P. 82, which states that the rules are not to be interpreted so as "to extend or limit the jurisdiction of the United States district courts." *Chevalier v. Baird Sav. Ass'n,* 66 F.R.D. 105 (E.D.Penn. 1975) (declining to interpret Rule 23 as a means to avoid the constitutional standing requirement under Fed.R.Civ.P. 82 and dismissing all defendants who had no dealings with the plaintiff).

Some district courts apply the "juridical link" doctrine where a defendant class is sought, (which is not the case here (App. 7-8a)). *Thillens, Inc. v. Community Currency Exch. Ass'n of Illinois, Inc.*, 97 F.R.D. 668, 676 (N.D.Ill. 1983) (holding that if the defendants are juridically linked, then a defendant class may be certified because this doctrine is an exception to the "Article III test requiring a case or controversy"); *In re Itel Sec. Litigation,* 89 F.R.D. 104, 119-23 (N.D. Calif. 1981) (certifying the defendant class because the defendant underwriters were juridically linked); *Ragsdale v. Turnock,* 625 F.Supp. 1212, 1223 n.11 (N.D.Ill. 1985) (considering the "juridical link" doctrine vis-α-vis a defendant class and holding that the defendants (102 states attorneys) "were related in a way such that single resolution of the dispute is preferred to a multiplicity of similar actions), *rev'd on other grounds,* 841 F.2d 1358, 1360 n.1 (7th Cir. 1988).

In *DeAllaume v. Perales*, 110 F.R.D. 299, (S.D.N.Y. 1986), the court acknowledged that certification of a defendant class raises due process concerns, but held that a defendant class may be certified under the "juridical link" doctrine where the members are linked by a unified policy, as long as Rule 23's requirements are met. *Id.* at 304, citing *Ackerman v. Oryx Communication, Inc.*, 609 F.Supp. 363, 376 (S.D.N.Y. 1979).[2] As one author stated, "The lack of

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[2] The judge-made "juridical link" exception to standing cannot be recognized without obliterating the individual defendants' due process rights. A defendant class cannot be certified under Rule 23(b)(2) because defendants have a due process right to notice and an opportunity to be heard. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 847-48 (1999), citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). This Court has held that plaintiff

(continued...)

a coherent legal framework for analyzing multiple defendant class actions has resulted in an unwarranted expansion of the doctrine." W.D. Henderson, COMMENT, *Reconciling the Juridical Links Doctrine with the Federal Rules of Civil Procedure and Article III*, 67 U.Chi.L.Rev. 1347, 1349 (2000).

One of the Seventh Circuit's concluding "observations" included that it was impermissible for "the named plaintiff . . . to piggy-back on the injuries of the unnamed class members" (App. 15a). It also stated standing "cannot be acquired through the back door of a class action" (App. 15a). Yet, this is exactly what has been done by adopting the "juridical link" theory and enabling plaintiffs to acquire standing against these defendants *via* what the Seventh Circuit has characterized as a "superior" and "efficient" use of the class action device (App. 14a). This decision is directly contrary to this Court's decisions in *O'Shea* and *Allee*. If, as this Court has held, a class action adds nothing to a plaintiff's standing, then how can a plaintiff have standing to sue a group of unrelated defendants who never impose any injury but are only linked by common issues of liability in a class action?

The "juridical link" theory is favored by "scholars [who] have stressed that a representative standing analysis or a finding that the class has standing should be substituted for any requirement that a proposed class represen-

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[2] (...continued)
class members' right to notice and an opportunity to opt out should be preserved. Defendants' rights can be no less than plaintiffs' rights. If the "juridical link" doctrine were accepted, it would effectively permit a plaintiff to circumvent the requirements of Rule 23(b), due process, and Article III's standing requirements.

tative demonstrate a personal stake in the outcome of class litigation." Herbert B. Newberg, A. Conte, 1 NEWBERG ON CLASS ACTIONS §2.06 n.46 (3d ed. 1992). However, this is not the law. *O'Shea,* 414 U.S. at 494.

The lower court's rationale for adopting this doctrine and overriding Article III's case and controversy requirement is that it is "efficient," "superior" and "economical." This same rationale would permit dispensing with any named plaintiff, and to proceed only with an experienced class action attorney, which surely would make class actions more "efficient." Advisory opinions are not constitutionally permitted, yet it could be said that it would be efficient, superior and economical to issue decisions before there is a case or controversy, secure in the belief that the dispute is inevitable and will arise at some point somewhere.

It has been 30 years since *LaMar* was decided. The district and circuit courts have taken this *dicta* and issued inconsistent, confusing decisions, creating a doctrine to evade the standing requirements of Article III. This Court should provide guidance to the lower courts and address the important question of whether the judicially-created "juridical link" doctrine permits a plaintiff to maintain a class action against a defendant who has imposed no injury on that plaintiff, and whether this doctrine can be applied to evade Article III requirements.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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DATED: APRIL 25, 2003

# APPENDIX

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# IN THE
# UNITED STATES COURT OF APPEALS
# FOR THE SEVENTH CIRCUIT

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No. 00-3789

DELVIN C. PAYTON, et al.,

*Plaintiffs-Appellants,*

*v.*

COUNTY OF KANE, et al.,

*Defendants-Appellees.*

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Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 99 C 8514—**Elaine E. Bucklo**, *Judge*.

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ARGUED OCTOBER 31, 2001—DECIDED SEPTEMBER 3, 2002

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Before BAUER COFFEY, and DIANE P. WOOD, *Circuit Judges*.

DIANE P. WOOD, *Circuit Judge*. Delvin Payton and five other former arrestees who were released on bail from Illinois county jails filed this putative class action to dispute the counties' practice (authorized by Illinois law) of imposing a bail fee, above and beyond the set bail amount, as a condition for release on bail. The plaintiffs moved for the certification of a plaintiff class including all individuals affected by the procedure in 19 named counties, while the defendants moved to dismiss the entire case. The district court agreed with the defendants, dismissed the action, and denied as moot the motion for class certification. For the reasons set forth in this opinion, we reverse and remand for further proceedings.

I

For several years, at least 19 out of Illinois's 102 counties have followed a practice of charging a "bail fee" to detainees who are released on bail or on their own recognizance. This fee varies between $1 and $45, depending on the county, and is collected above any bail amount that is due.

In 1999, the Illinois General Assembly passed Illinois Public Act 91-0094, amending the Counties Code and providing that bond fees may be added to the required bond. The section was codified as part of the Illinois Bond Statute, 725 ILCS 5/110-7(b), as amended (the Act). The Act, which became effective on January 1, 2000, provides that "[t]he fees of sheriffs in counties of the first and second class, except where increased by county ordinance under this Section, shall be as follows: [. . .] For taking special bail, $1 in each county." 55 ILCS 5/4-5001.

The Act also empowers county boards to increase the statutory fee by ordinance "if the increase is justified by an acceptable cost study" showing that the minimum $1 fee is not "sufficient to cover the costs of providing the service." 55 ILCS 5/4-5001. Dealing with the deposit of bond, 725 ILCS 5/110-7(b) provides that "[u]pon depositing this sum *and any bond fee authorized by law*, the person shall be released from custody subject to the conditions of the bail bond" (emphasis added). The plaintiffs allege that the fee is imposed even when the detainee is released on her own recognizance without posting bail. Regardless of county-specific increases, every detainee posting bond in Illinois is charged at least the statewide $1 minimum. Kane County charges an $11 fee, DuPage County charges $15, and all other counties charge between $1 and $45.

Plaintiffs Payton, Wallace, Cannon, and Clay were confined to the Kane County jail after February 1, 1998,

and were granted bail by the Circuit Court of the Sixteenth Judicial Circuit. They were required to pay an $11 bond fee per bond posted before their release from custody. Plaintiffs Corson and Carson were confined to the DuPage County jail after October 1, 1997, and were granted bail by the Circuit Court of the Eighteenth Judicial Circuit. They paid a $15 bond fee for each bond posted as a condition of release from custody.

No plaintiffs are named who were charged a bond fee by any county other than Kane and DuPage. The complaint alleges, however, that these fees were imposed on an unknown number of individuals. Based on the generality of the practice, as now mandated by the Act, the named plaintiffs sought to represent a class consisting of (a) all persons confined to the county jail of each defendant county, on or after the inception of the bond fee practice, who posted a cash bond and paid a bond fee to secure their pretrial release from jail; (b) all persons confined to the county jail of each defendant county who were granted personal recognizance bonds and paid a bond fee to secure their pretrial release; (c) all persons confined to the county jail on or after the inception of the bond fee practice who do not have the funds to pay the bond fee to secure their pretrial release but can otherwise satisfy the bond requirements; and (d) all persons confined to the county jail of each county on or after January 1, 2000, who have posted or will post bail to obtain pretrial release. The named plaintiffs, of course, have suffered directly only from the conduct of (respectively) the counties of Kane and DuPage.

The district court granted the defendants' motion to dismiss on September 25, 2000, finding that the named plaintiffs lacked standing to pursue the entire lawsuit. It did not reach the question of class certification.

## II

Plaintiffs present three issues for review. First, they claim that the class has standing to sue all defendants who are "juridically linked" together, in that they all follow the Illinois bail fee statute, even if not all members of the class suffered injury from a particular defendant county. Second, they argue that the district court erred in denying their motion for class certification, asserting that it should have allowed the plaintiffs to proceed as a class at least against the two counties that had directly injured them. Third, if all else fails, they argue that at the very least the court should not have dismissed their second amended complaint between individually named plaintiffs and the counties that actually released them, as those are run-of-the-mine § 1983 cases. Logic dictates that we analyze the issues in reverse order, for if the plaintiffs fail on the more limited issues, they certainly cannot prevail on their broader claims.

We review a dismissal for lack of standing de novo. *Rifkin v. Bear Stearns & Co., Inc.*, 248 F.3d 628, 631 (7th Cir. 2001). As the class certification request was denied as moot, there is nothing for us to review on that point other than the correctness of the mootness decision, which is affected by the district court's standing ruling. Those present legal questions which we will review *de novo*.

### A. The Individual Cases

The named plaintiffs set forth individual claims against DuPage and Kane Counties—the counties from whose jails they were released upon posting of bond and the payment of the contested bond fee. It is hard to see how they could have failed to state a claim under the notice pleading regime of FED. R. CIV. P. 8, which the Supreme

Court recently re-emphasized in *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, ___, 122 S. Ct. 992, 998 (2002). See also *Walker v. Thompson*, 288 F.3d 1005, 1010 (7th Cir. 2002) (Ripple, J., concurring). In their complaint, Payton, Wallace, Cannon, and Clay allege that they were confined after February 1, 1998, to the county jail of Kane County, and Corson and Carson allege that they were confined in the DuPage County jail. The six individuals further allege that they were required to pay a bond fee ranging between $11 and $15 to the respective counties as a condition of their release. This policy, they claim, violates their rights under the Eighth and Fourteenth Amendments to the U.S. Constitution, thus entitling them to relief under 42 U.S.C. § 1983.

The district court did not mention any grounds for the dismissal of the individual claims of these named plaintiffs against Kane and DuPage Counties, nor did it explain why it thought that they lacked standing to sue. "Article III requires that the plaintiff has suffered an 'injury in fact' which is fairly traceable to the challenged action of the defendant and 'likely,' as opposed to merely 'speculative,' to be 'redressed by a favorable decision.'" *Doe v. County of Montgomery*, 41 F.3d 1156, 1159 (7th Cir. 1994) (citations omitted); see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The individuals easily meet these requirements: at the very least, they suffered a monetary injury when they were required to make the extra payment; the injury is traceable to the policy of each jail; and it can be redressed by a lawsuit.

It appears instead that what the district court meant to say was that the plaintiffs lacked "standing" to bring a class action. However, putting to one side the problem inherent in conflating the standing inquiry with the inquiry under Rule 23 about the suitability of a plaintiff

to serve as a class representative, the proper remedy for this shortcoming is not dismissal of the entire action, but rather an order denying class certification and permitting the case to continue as an individual suit. We accordingly reverse this part of the district court's order and remand for the reinstatement of the individual actions.

### B. Class Action Against DuPage and Kane Counties

It is also unclear why the district court thought that the proposed class action against DuPage and Kane Counties could not go forward (at least to the point of a Rule 23 certification decision), since named representatives from each of those jails were before the court, and the existence of the state law strongly suggests that these were not the only people who paid a release fee. Indeed, on the same day as it dismissed the present action, the district judge granted class certification in two cases based on the same occurrences, one brought by plaintiffs challenging Kane County practices (*Coleman v. County of Kane,* No. 00-C-295, 2000 U.S. Dist. LEXIS 17438 (N.D. Ill. Sept. 26, 2000)) and the other challenging DuPage County practices (*Ringswald v. County of DuPage,* No. 00-C-296, 2000 U.S. Dist. LEXIS 17437 (N.D. Ill. Sept. 26, 2000)). The district court did not offer a reason why the named plaintiffs in this case failed to satisfy the requirements of class certification, unlike those in *Ringswald* and *Coleman*, nor did it discuss whether those two actions in some way precluded the certification requested here. The defendants in *Ringswald* and in *Coleman* were granted summary judgment on the federal claims on October 11, 2001. We express no opinion on the effect that the outcome of these cases might have on the merits of the suit at bar. We note only that a determination of the propriety of class certifica-

tion should not turn on likelihood of success on the merits. See *West v. Prudential Secs., Inc.*, 282 F.3d 935, 938 (7th Cir. 2002); *Bieneman v. City of Chicago*, 838 F.2d 962, 964 (7th Cir. 1988). (It is a different matter if the proposed named plaintiff loses on the merits prior to certification, but we do not have that situation here yet.)

Given our reversal of the dismissal of the individual actions, we also reverse the district court's judgment dismissing the putative class actions against DuPage and Kane Counties and remand for further appropriate proceedings. On remand, the parties must consider among other things the possible consequences of the outcome in *Ringswald* and *Coleman* for this suit.

### C. Class Action Against Other 17 Counties

We turn now to the thorniest issue in this case: the propriety of maintaining a suit against the other 17 counties, for which we have no specific named plaintiffs.

We can dispose at the outset of one of the appellants' arguments. They contend that the district court should have certified both a plaintiff and a defendant class. App. Br. at 11. But no one really asked for certification of a defendant class of 19 counties, or all Illinois counties, and thus we cannot fault the district court for failing to do so. The motion for class certification filed on April 17, 2000, discusses only the requirements for a plaintiff class and argues only the Rule 23 requirements with respect to the plaintiffs. Even though the motion concludes by asking summarily for "an order certifying this action be maintained as a class action with regard to both plaintiffs and defendants," the motion was insufficient to serve as a proper request for a defendant class. Moreover, it is too late to request such certification for

the first time on appeal. Defendant classes must be treated with great care in any event, as we have noted in the past, see *Ameritech Ben. Plan Comm. v. Communication Workers of Am.*, 220 F.3d 814, 820 (7th Cir. 2000), *Henson v. East Lincoln Township,* 814 F.2d 410, 412-15 (7th Cir. 1987); they certainly should not be created without full consideration.

But if the defendant counties, 19 in all, are not linked as a class, how can they all be sued by a class represented by six named plaintiffs who have direct claims against only two of them? In some sense, this is a classical problem of standing: to bring a valid case, a plaintiff must allege that a defendant—the very defendant sued—has somehow wronged her in a legally cognizable way. See *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992). The conduct complained of must be "fairly . . . traceable to the challenged action of the defendant, and not . . . the result of the independent action of some third party not before the court." *Id.* at 563 (citation in brackets omitted). And whatever else Payton and the other plaintiffs may show the counties of Kane and DuPage did to them, no one is claiming that, for instance, Effingham County in any way harmed one of the named plaintiffs.

The real question, therefore, is whether for standing purposes we may look only to the named plaintiffs, or if, once the requirements of Rule 23 are met, the true plaintiff is the class as a whole. If the latter is true, then the question arises whether it is enough that some members of the class were injured by at least one named defendant. (There is obviously no logistical reason why all 19 counties cannot be named as separate defendants.) The plaintiffs argue that both of those propositions are correct: the class action device does indeed entitle the group as a whole (represented by people from less than

all counties) to sue all 19 counties, and it is enough that someone in the class was injured by one of the defendants. In this respect, they invoke the so-called "juridical link" doctrine, which would entitle them to sue all similarly situated counties in a single case if they can show that their injuries arise out of a common legal rule (the Act) that is binding on, and followed to various degrees by, all the named counties.

The juridical link doctrine arose out of the Ninth Circuit's decision in *La Mar v. H & B Novelty & Loan Co.*, 489 F.2d 461 (9th Cir. 1973). *LaMar* held that a plaintiff without a cause of action against a specific defendant cannot "'fairly and adequately' protect the interests of those who do have such causes of action," for purposes of Rule 23(a). *Id.* at 466 (citations omitted). Nevertheless, and relevantly to our case, the court went on to hold that if the plaintiffs as a group—named and unnamed—have suffered an identical injury at the hands of several parties related by way of a conspiracy or concerted scheme, or otherwise "juridically related in a manner that suggests a single resolution of the dispute would be expeditious," the claim could go forward. *Id.*

This court has never addressed the juridical link doctrine squarely, even though several district courts within this circuit have accepted it. See, *e.g.*, *Weiss v. Winner's Circle of Chicago, Inc.*, No. 91 C 2780, 1995 WL 755328, at *2 (N.D. Ill. Dec. 14, 1995); *Hopson v. Schilling*, 418 F. Supp. 1223, 1238 (N.D. Ind. 1976). We are skeptical that the use of this terminology is conducive to sound analysis of the kind of problem presented here: the real issues are whether the plaintiff class was injured by the defendants, and if so, whether the claims of the proposed named plaintiffs are representative. Post-*LaMar* cases from other courts have suggested that if all the defendants

took part in a similar scheme that was sustained either by a contract or conspiracy, or was mandated by a uniform state rule, it is appropriate to join as defendants even parties with whom the named class representative did not have direct contact. See, *e.g.*, *Moore v. Comfed Sav. Bank,* 908 F.2d 834, 838-39 (11th Cir. 1990); *Fallick v. Nationwide Mut. Ins. Co.,* 162 F.3d 410, 423-24 (6th Cir. 1998). See also *Murer v. Montana State Comp. Mut. Ins. Fund,* 849 P.2d 1036, 1039 (Mont. 1993) (a "juridical link [exists] where the various defendants are related instrumentalities of a single state, such as various law enforcement agencies").

In *Fallick,* the Sixth Circuit, using juridical link analysis, concluded that once a plaintiff had established a claim against one of the named defendants, the rest of the determination about the suitability of class certification would proceed as usual under Rule 23. *Id.* at 423. The court reasoned that, in the presence of the concerted action contemplated in *LaMar,* it is not necessary that each named plaintiff have individual standing to sue each named defendant. Instead, a plaintiff who has standing to sue at least one of the named defendants also "has standing to challenge a practice even if the injury is of a sort shared by a large class of possible litigants." *Id.*

Similarly, the Eleventh Circuit in *Moore* held that a group of named plaintiffs could bring a claim against several defendants—including those against whom the named plaintiffs did not have a direct claim—finding that they were needed for "complete relief" because of their linked action. 908 F.2d at 838-39. As reported in *Moore,* the district court had stated in the opinion below that "[o]ther named plaintiffs could be supplied to match with each named defendant but it would be unwieldy to do so. Each plaintiff and the defendants have connection to each

other through Land Bank equity. The case is simpler and more economical with the class of plaintiffs and the named defendants." *Id.* at 838. The court also noted that "juridical links" were most often found when a state or local statute required common action.

Finally, relying on *Moore,* the Supreme Judicial Court of Massachusetts recently endorsed the juridical link doctrine for a plaintiff class in which the named plaintiffs were not directly harmed by all the named defendants, analogizing the analysis to that performed under permissive joinder. See *Weld v. Glaxo Wellcome Inc.,* 746 N.E.2d 522, 530 (Mass. 2001). See generally William D. Henderson, Cmt., *Reconciling the Juridical Links Doctrine with the Federal Rules of Civil Procedure and Article III*, 67 U. CHI. L. REV. 1347 (2000) (discussing the juridical link doctrine in the context of the rules on joinder and class actions).

In our case, given that the bail bond fee is imposed pursuant to a state statute, and that county sheriffs are for this purpose an arm of the state, see *Scott v. O'Grady,* 975 F.2d 366, 371 (7th Cir. 1992), it is reasonable for the putative plaintiff class to try to hold all counties accountable within one suit. The constitutionality of a bond fee (whether it is $1 or $45) should not differ from one county to the next, when such a fee is imposed pursuant to the same statute.

We come therefore to the central issue in this case, which is whether these named plaintiffs may represent a class that includes people from the other 17 named counties. We have begun our analysis with the question of class certification, mindful of the Supreme Court's directive to consider issues of class certification prior to issues of standing. See *Ortiz v. Fibreboard Corp.,* 527 U.S. 815 (1999): "the class certification issues are . . . logically antecedent to Article III concerns, and themselves pertain to stat-

utory standing, which may properly be treated before Article III standing. Thus the issue about Rule 23 certification should be treated first." *Id.* at 831 (citations omitted). This involves defining the class and assessing whether the proposed class representatives can satisfy all four requirements of Rule 23(a), and at least one of the categories of Rule 23(b).

Because the district court never undertook this inquiry, it would be premature for this court to do so without a proper record. We note only that Rule 23(a) inevitably requires consideration of the typicality of the claims presented by the named parties (Rule 23(a)(3)), which allows exploration of the question whether the essence of the suit relates to the state statute or if the named representatives' claims are more particular to each individual county. The numerosity, commonality, and adequacy of representation factors will also require further development on remand, subject to whatever ruling the court may make with respect to the related class actions and with respect to the individual claims. Because this action was pending at the time the *Ringswald* and *Coleman* suits were decided, and because the plaintiffs here are seeking monetary relief in part, the court will also need to consider whether the other litigation is capable of barring claims that would have required the procedural protections of Rule 23(b)(3), including especially the right to opt out of the related case.

We close with a few observations about the use of the class action device to consolidate claims that are common to plaintiff class members, where the defendants have not had the same interactions with each member of the class. We understand Ortiz to rest on the long-standing rule that, once a class is properly certified, statutory and Article III standing requirements must be assessed

with reference to the class as a whole, not simply with reference to the individual named plaintiffs. The certification of a class changes the standing aspects of a suit, because "[a] properly certified class has a legal status separate from and independent of the interest asserted by the named plaintiff." *Whitlock v. Johnson,* 153 F.3d 380, 384 (7th Cir. 1998). See also *United States Parole Comm'n v. Geraghty,* 445 U.S. 388, 404 (1980); *Franks v. Bowman Transp. Co., Inc.,* 424 U.S. 747, 753 (1976); *Sosna v. Iowa,* 419 U.S. 393, 399 (1975). The Supreme Court underscored in *Sosna* the independent legal status of class actions from the original plaintiff and held that, where a class has been properly certified, even the mootness of the named plaintiff's individual claim does not render the class action moot—very much a standing inquiry. 419 U.S. at 399-401. See *Franks,* 424 U.S. at 753-55 (applying *Sosna* even though the named plaintiff's claim did not involve an issue "capable of repetition, yet evading review"). In *Geraghty,* the Court extended this principle and held that a class action does not become moot upon expiration of the named plaintiff's substantive claim even when class certification was denied in the district court, 445 U.S. at 404, and the named plaintiff could continue to argue on appeal for reversal of the district court's denial of class certification despite the mootness of his individual claim. See *id.* at 404-05. We conclude that the plaintiffs may be entitled to represent a class suing all 19 defendant counties if, under the reasoning of *LaMar* and its progeny, they fulfill all the requirements of Rule 23.

This question of "standing" is just one part of a rather complex network of rules regulating class actions, under which the named plaintiff is the critical actor for some purposes, every individual member of the class is relevant for other purposes, and the class as a whole is the focal

point for yet other purposes. For instance, the citizenship requirement for purposes of diversity jurisdiction in a class action hinges entirely on the citizenship of the named plaintiffs. See *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356 (1921). Until the enactment of 28 U.S.C. § 1367, in contrast, amount in controversy rules had to be satisfied by each member of the class, according to *Zahn v. International Paper Co.*, 414 U.S. 291, 301 (1973); there is currently a split in the circuits on the question whether § 1367 legislatively overruled *Zahn*. Compare *Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 930-31 (7th Cir. 1996) (*Zahn* overruled by § 1367); and *Rosmer v. Pfizer Inc.*, 263 F.3d 110, 114 (4th Cir. 2001) (same); with *Trimble v. Asarco, Inc.*, 232 F.3d 946, 962 (8th Cir. 2000) (*Zahn* still good law despite § 1367); and *Meritcare v. St. Paul Mercury Ins. Co.*, 166 F.3d 214, 218-20 (3d Cir. 1999) (same). See also *Free v. Abbott Labs.*, 529 U.S. 333 (2000) (Court divides 4-4 on this issue). The class is treated as an entity for purposes of claim preclusion, assuming that it was adequately represented. See, *e.g.*, *Tice v. American Airlines*, 162 F.3d 966, 972 (7th Cir. 1998).

We see no reason to truncate potentially efficient uses of the class action device when they are otherwise not prohibited and here the class action device may be superior to 19, or 102, different cases in each Illinois county challenging the effects of the same state statute. Compare *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1014-15 (7th Cir. 2002). A Rule 23 analysis, which was never performed in this case, may suggest that there is little trouble with the named plaintiffs representing this class under a standard "commonality" or "adequacy of representation" inquiry—considerations we leave to the district court. Most importantly, there are cases where appropriate relief may only be obtained through one broad suit, and it will be impossible to find a named plaintiff to

match each defendant. See, *e.g., Ragsdale v. Turnock,* 841 F.2d 1358 (7th Cir. 1988). If the defendants with whom the named representative did not interact directly are following a common statute (and this common factor assures that the representative has the same legal claim as the unnamed parties—or, to use the terminology other courts have adopted, the defendants are "juridically linked"), we see nothing in either standing doctrine or Rule 23 that automatically precludes use of the class action device.

This is not a case where the named plaintiff is trying to piggy-back on the injuries of the unnamed class members. That, of course, would be impermissible, in light of the fact that "a named plaintiff cannot acquire standing to sue by bringing his action on behalf of others who suffered injury which would have afforded them standing had they been named plaintiffs; it bears repeating that a person cannot predicate standing on injury which he does not share. Standing cannot be acquired through the back door of a class action." *Allee v. Medrano,* 416 U.S. 802, 828-29 (1974) (Burger, C.J., dissenting). See also *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974); *Bailey v. Patterson*, 369 U.S. 31, 32-33 (1962). These putative representatives were personally injured by the operation of the very same statute that caused the injuries to all other members of the proposed class.

## IV

For the foregoing reasons we REVERSE the judgment of the district court and REMAND this case for further proceedings in accordance with this opinion.

A true Copy:

Teste:

*Clerk of the United States Court of Appeals for the Seventh Circuit*

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

January 27, 2003

**Before**
Hon. William J. Bauer, *Circuit Judge*
Hon. John C. Coffey, *Circuit Judge*
Hon. Diane P. Wood, *Circuit Judge*

No. 00-3789

| | | |
|---|---|---|
| DELVIN C. PAYTON, et al., | ) | Appeal from the |
| *Plaintiffs-Appellees*, | ) | United States District |
| | ) | for the Northern |
| *v.* | ) | District of Illinois. |
| | ) | |
| | ) | No. 99 C 8514 |
| COUNTY OF KANE, et al., | ) | |
| *Defendants-Appellees.* | ) | **Elaine E. Bucklo,** |
| | ) | Judge. |

**ORDER**

On consideration of the petitions for rehearing and petitions for rehearing *en banc*, no judge in active service has requested a vote * on the petitions for rehearing *en banc* and all of the judges on the original panel have voted to deny rehearing. It is, therefore, ORDERED that rehearing and rehearing *en banc* are DENIED.

* Chief Judge Joel M. Flaum did not participate in considerations of these petitions.

**Minute Order Form**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge
or Magistrate Judge Elaine E. Bucklo

Sitting Judge if
Other Than Assigned Judge _____

Case No. 99 C 8514 **Date** 9/25/2000

Case Title: Payton et al. v. County of Kane, et al.

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd-party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION: _____

DOCKET ENTRY:

(1) [ ] Filed motion of [use listing in "Motion" box above.]

(2) [ ] Brief in support of motion due _____.

(3) [ ] Answer brief to motion due ____. Reply to answer brief due _____.

(4) [ ] Ruling/Hearing ____ set for ____ at _____.

(5) [ ] Status hearing [held/continued to] on _____ re-set for _____ at _____.

(6) [ ] Pretrial conference [held/continued to] [set for/re-set for] on___set for___at ___.

(7) [ ] Trial [set for/re-set for] on _____ at _____.

(8) [ ] [Bench trial/Jury Trial] [Hearing] held/continued to _____ at _____.

(9) [ ] This case is dismissed [with/without] prejudice and without costs [by/agreement/pursuant to]
[ ] FRCP 4(m) [ ] General Rule 21
[ ] FRCP 41(a)(1) [ ] FRCP 41(a)(2).

(10) [X] [Other docket entry] Defendants' motions to dismiss all claims against them are granted and the case is dismissed. Plaintiffs' motion for class certification is denied as moot. Any pending motion in this case is terminated as moot. See reverse side of this minute order for details.

(11) [X] [For further detail see order on the reverse side of the original minute order.]

* * *

*Payton v. County of Kane et al.*, 99 C 8514

The plaintiffs filed this putative class action against twenty counties in Illinois. Each defendant, pursuant to an ordinance or practice, authorized the sheriff of the county to collect, and the sheriffs did collect, bond fees in addition to the required, court-determined bond. The plaintiffs maintain that this practice violates state law and the Illinois and United States Constitutions. Plaintiffs move for class certification, and the defendants move to dismiss all claims against them.

Generally, I address class certification before considering the merits of a case, and I do so here. However, before proceeding to analysis of the class question, I first determine whether plaintiffs have standing. "If a plaintiff lacks independent, individual standing to bring a claim, the proper disposition of the case is not denial of the class certification. Rather, . . . the court must dismiss the case because without a case or controversy, the court lacks jurisdiction. Therefore, if the court finds that the plaintiffs lack standing, then it will not reach the class certification issue." *Ayers v. United States Football League*, 1986 WL 6095, *2 (N.D. Ill. May 20, 1986). A class representative must be "part of the class and 'possess the same interest and suffer the same injury' as the class members." *East Texas Motor Frieght System, Inc. v. Rodriquez*, 431 U.S. 395, 403 (1977). Plaintiffs seek here to certify four subclasses of plaintiffs but only fit into one of the four categories. The plaintiffs were themselves arrested, detained, and paid bond fees only in DuPage and Kane counties so seemingly have no standing against the defendants who did not injure them and cannot bring an action on behalf of a class of which they are not a member.

In their reply brief, the plaintiffs claim that standing is established by a juridical link between the defendants, i.e. a legal relationship which sufficiently relates all the defendants so that a single action is preferable. *Thillens, Inc. v. Community Currency Exch. Assoc. of Ill., Inc.*, 97 F.R.D. 668, 675 (N.D. Ill. 1983). Although some courts have conferred standing in this fashion—an approach not expressly adopted by the Seventh Circuit, juridical links are found in cases involving a defendant class whose members are "officials of a single state [who] are charged with enforcing or uniformly acting in accordance with a state statute, or common rule or practice of a state-wide application, which is alleged to be unconstitutional." *Mudd v. Busse*, 68 F.R.D. 522, 527-28 (N.D. Ind. 1975), *aff'd*, 582 F.2d 1283 (7th Cir. 1978) (no juridical link against a defendant class composed of state judicial officers charged with "various individuals policies concerning bail in individual cases. The only common thread is that all such policies and abuses of discretion are alleged to be errors of constitutional magnitude."). While violations of a common practice are alleged to be at issue here, the defendants are not state officials nor are they so closely related that they should be treated substantially as a single unit. This juridical link approach generally applies in cases in which as a matter of law each official must act in the same manner, so that the plaintiff class claims are identical for all defendant class members. These plaintiffs were harmed by the practice of only two of the defendant counties, not application of a state statute controlling the conduct of all defendant counties. The counties here were free to implement their own practices, and apparently did so. Allowing a class suit against a defendant class really is an alternative means of permitting plaintiffs to sue the state itself, but plaintiffs have not joined all 102 Illinois counties, as it would seem they

would if alleging a state-wide practice. The conduct being challenged depends on facts peculiar to each defendant's activities.

Accordingly, there is no juridical link that would permit the maintenance of this action against the named defendants. The named plaintiffs do not have standing to pursue claims against a defendant class, with the majority of whom they have had no dealings. *See also Thompson v. Board of Educ. of Romeo Community Schools*, 709 F.2d 1200 (6th Cir. 1983) (where each school board adopted its own leave policy, plaintiff teachers as a class did not have standing to sue defendant school boards for which they had not worked, and class certifications were accordingly inappropriate); *Stewart v. Winter,* 87 F.R.D. 760, 771 (N.D. Miss. 1980), *aff'd* 669 F.2d 328 (5th Cir. 1982) (constitutional action brought by present and former inmates of county jails could not be certified as to defendant classes of sheriffs, boards of supervisors, and county health officers, so it would be legal error to certify a statewide plaintiff class inasmuch as there was no case or controversy between the local officials of the eight representative counties and the inmates of jails in the other counties). Because I conclude that the plaintiffs do not have standing to bring this action, I dismiss the case and deny the motion for class certification as moot.

AO450 (Rev. 5/85) Judgment in a Civil Case

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

**JUDGMENT IN A CIVIL CASE**

Payton, et al.,

v.

Case Number: 99 C 8514

The County of Kane, et al.,

☐ Jury Verdict. This action came before the Court or a trial by jury. The issues have been tried and the jury rendered its verdict.

■ Decision by Court: This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that defendants' motions to dismiss all claims against them are granted and the case is dismissed. Plaintiffs' motion for class certification is denied as moot.

Michael W. Dobbins, Clerk of Court

Dated: 9/25/2000

/s/ Mathew P. John
Mathew P. John, Deputy Clerk

## CONSTITUTIONAL PROVISION INVOLVED

Article III, §2 of the United States Constitution provides, in pertinent part:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States . . . to Controversies . . . between a State, or the Citizens thereof, . . .

## STATUTES INVOLVED[1]

Illinois Public Act 91-0094 (Senate Bill No. 1076) provides, in pertinent part:

> **AN ACT in relation to bond fees.** Be it enacted by the People of the State of Illinois, represented in the General Assembly:
>
> Section 5. The Counties Code is amended by changing Section 4-5001 (55 ILCS 5/4-5001) as follows:
>
> > Sec. 4-5001. Sheriffs; counties of first and second class. The fees of sheriffs in counties of the first and second class, except when increased by county ordinance under this Section, shall be as follows: . . .
> >
> > For taking all bonds on legal process, <u>civil and criminal</u>, in counties of first class, $1; in second class, $1. . . .
>
> Section 10. The code of Criminal Procedure of 1963 is amended by changing Section 110-7 (725 ILCS 5/110-7) as follows:
>
> > Sec. 110-7. Deposit of Bail Security. The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail, but in no event shall such deposit be less than $25 . . . Upon depositing this sum <u>and any bond fee authorized by law</u>, the person shall be released form custody subject to the conditions of the bail bond. . . .

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[1] The language added by the amendment is underlined.